

Daniel R. Clark  
281 Pembroke Street  
Pembroke, NH 03275

Re: Dandy PC Automotive Repair, Inc.  
279 Pembroke Street, Pembroke, NH  
UST ID #0-111476

**ADMINISTRATIVE FINE  
AND LICENSE ACTION  
No. AF 05-082**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Daniel R. Clark, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Daniel R. Clark is the registered facility owner of three underground storage tanks ("USTs") at the Dandy PC Automotive Repair, Inc., facility ("the Facility"), further identified as UST # 0-111476, located on real property at 279 Pembroke Street, Pembroke, NH ("the Property"). Daniel Clark signed the Registration for Underground Storage Tank Systems for the Facility, received by DES on March 29, 2001, as the owner.
3. On September 28, 2005, the Division issued Notice of Proposed Administrative Fine No. AF 05-082 ("the Notice") to Daniel R. Clark seeking fines totaling \$3,100 for violations of New Hampshire Administrative Rules Part Env-Wm 1401.
4. The Notice cited Daniel R. Clark for violating Env-Wm 1401.04(a) by failing to provide DES with a registration form for the 500-gallon #2 fuel oil UST at the Facility. Pursuant to Env-C 607.02(a) the Division sought a fine of \$1,000.
5. The Notice further cited Daniel R. Clark for violating Env-Wm 1401.18(g)(10) by failing to submit a closure report for the removal of the 500-gallon #2 fuel oil UST. Pursuant to Env-C 607.06(e) the Division sought a fine of \$500.
6. The Notice further cited Daniel R. Clark for violating Env-Wm 1401.25(h) by failing to properly install overfill protection devices for the three 6,000-gallon gasoline USTs (Tanks 6 - 8). Pursuant to Env-C 607.03(i) the Division sought a fine of \$600.
7. The Notice further cited Daniel R. Clark for violating Env-Wm 1401.33(b) by failing to provide corrosion protection for the piping under the dispensers of Tanks 6 - 8. Pursuant to Env-

C 607.03(f) the Division sought a fine of \$1,000.

8. In order to settle this matter, the Division and Daniel R. Clark have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine in the amount of \$3,100, 20% or \$620 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$620 shall be suspended due to Daniel R. Clark's history of compliance at this Facility. An additional 20% or \$620 shall be suspended due to the Facility's small business status. An additional 20% or \$620 shall be suspended due to Daniel R. Clark's cooperation in returning the Facility into compliance.

10. The suspended portion of the proposed fine, in the amount of \$2,480 is contingent upon Daniel R. Clark maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Daniel R. Clark fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,480 shall become due and payable immediately. If Daniel R. Clark maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

11. Daniel R. Clark agrees to pay the remaining \$620 upon execution of this Agreement.

12. Payment under Paragraph #11 and any payment that becomes due pursuant to Paragraph #10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

13. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

14. By executing this Agreement, Daniel R. Clark waives his right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

15. The effective date of this Agreement will be the date on which it is signed by Daniel R. Clark, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

16. No failure by DES to enforce any provision of this Agreement after any breach or default

will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

1-12-06  
Date

**COPY**  
Daniel R. Clark, Owner

1/26/06  
Date

DES Waste Management Division  
**COPY**  
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 15<sup>th</sup> day of FEBRUARY, 2005.

**COPY**  
Michael P. Jolly, Commissioner  
Department of Environmental Services